



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 112
[2009 Senate Bill 440]

**Recovery Zone Facility Bonds and
County Industrial Development
Revenue Bonding**

BACKGROUND

Recovery Zone Facility Bonds

The American Recovery and Reinvestment Act of 2009 (ARRA), the Federal Stimulus Act, authorized certain local governments to issue specified amounts of several types of tax-exempt bonds, including recovery zone facility bonds (RZF bonds), which are tax-exempt private activity bonds that allow businesses within recovery zones to finance certain depreciable capital projects.

Under the ARRA, the size of the bond issuance allocations provided to individual states is based on the number of unemployed individuals in each state compared to the number of unemployed individuals nationwide. The ARRA specifies that within each state, the total state allocation is to be reallocated to counties and large municipalities based on the relative employment declines in each county or municipality in 2008. (A “large municipality” is a municipality with a population of more than 100,000.)

The ARRA provides that a county or municipality may waive any portion of an allocation it receives.

The total RZF bond issuance allocation for the State of Wisconsin is \$238,217,000. This amount was reallocated to 63 counties and the Cities of Milwaukee, Madison, and Green Bay.

Midwestern Disaster Area Bonds

The Heartland Disaster Tax Relief Act of 2008, Title VII, Subtitle A, of the Emergency Economic Stabilization Act of 2008, Public Law 110-343 (HDTRA), established Midwestern Disaster Area (MDA) bonds, a form of tax-exempt private activity bond. MDA bonds may only be issued to finance projects in areas that were declared to be major disaster areas as a result of storms, tornadoes, or flooding in 2008. In Wisconsin, only projects located in the following counties (“affected counties”) may utilize MDA bonds:

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, and Winnebago.

Under the HDTRA, Wisconsin received MDA bond issuance allocations in the amount of \$3,830,112,000. In Executive Order No. 288, the Governor directed that \$50 million of this amount be reserved for each affected county until January 1, 2011, and the remaining amount, approximately \$2.3 billion, be unreserved and available to projects in any affected county in the order that qualifying requests are received.

2009 WISCONSIN ACT 112

Generally, 2009 Wisconsin Act 112 provides for the waiver of city and county RZF bond allocations and the reallocation of those bond allocations by the Department of Commerce (Commerce). The Act also provides counties with the power to issue industrial development revenue bonds.

Waiver of RZF Bond Allocations

Act 112 specifies the following circumstances under which RZF bond allocations are considered to be unused and deemed to be waived:

As of **March 1, 2010**, a city or county's RZF bond allocation is considered to be waived, except for any amount to which one of the following applies:

1. The city or county sends written notice to Commerce that states that RZF bonds have been issued; or
2. The city or county sends written notice to Commerce that does both of the following:
 - a. Identifies the amount of a proposed issuance of RZF bonds and the nongovernmental entity that will own or operate the project being financed.
 - b. Includes a letter to Commerce from the prospective purchaser of the RZF bonds that states the prospective purchaser's expectation that an agreement for the purchase of the bonds will be executed before May 1, 2010, and the bonds will be issued before June 1, 2010.

As of **May 1, 2010**, a city or county's RZF bond allocation is considered to be waived, except for any amount to which one of the following applies:

1. The city or county sends written notice to Commerce that states that RZF bonds have been issued; or
2. The city or county sends written notice to Commerce that states that an agreement has been executed by the city, county, other local governmental unit, or authority that will issue the RZF bonds, and a bond purchaser, providing for the purchase of RZF bonds.

As of **June 1, 2010**, a city or county's RZF bond allocation is considered to be waived except for any amount about which the city or county sends written notice to Commerce that states that RZF bonds have been issued.

Reallocation of RZF Bonds

The Act directs Commerce to, by rule, establish and administer a system to reallocate the waived RZF bond allocations among local units of government, including commissions formed by contract

under intergovernmental agreement; special purpose districts; state authorities, such as the Wisconsin Housing and Economic Development Authority, the Wisconsin Health and Educational Facilities Authority, and the University of Wisconsin Hospitals and Clinics Authority; and local housing, redevelopment, or community development authorities. The Act also exempts emergency rules related to RZF bond reallocation from statutory requirements on findings related to the preservation of public peace, health, safety, or welfare.

The Act specifies reallocation procedures for applications made after March 1, 2010, but before June 1, 2010. During that time, Commerce shall make reallocations from the aggregate pool for projects in cities and counties that waived an allocation in an amount equal to the total allocation waived by the city or county or the amount necessary for the project, whichever is less.

Act 112 also addresses the situation where, during the period after March 1, 2010, but before June 1, 2010, reallocation requests exceed the waived allocations remaining in the aggregate pool. In the event the reallocation requests exceed the allocations remaining in the aggregate pool, the department shall prorate the available allocations among cities and counties in proportion to the amount waived by the cities and counties.

MDA Bond Allocations

Act 112 provides that if a county that is eligible to issue an MDA bond waives any portion of its RZF bond allocation before January 1, 2011, Commerce must increase that county's allocation of MDA bond authority by the amount of the county's waived RZF bond limitation allocation.

The Act requires Commerce to consider the availability of MDA bonds as an alternative source of financing for a project for which recovery zone facility bond allocations are sought.

The Act also provides that cities that are eligible to issue MDA bonds that waive any portion of their RZF bond allocation will receive a corresponding increase in their MDA bond allocation.

Open Records

2009 Act 112 specifies that a letter from a prospective purchaser, while in the possession of a city, county, or Commerce, is not subject to the right of inspection or copying under state open records law before the first day of the third month after the letter is received by the city, county, or Commerce.

County Authority to Issue Industrial Development Revenue Bonds

2009 Wisconsin Act 112 authorizes counties to issue industrial development revenue bonds (IDRBs) under s. 66.1103, Stats.

Prior to Act 112, s. 66.1103, Stats., authorized municipalities (cities, villages, or towns) to issue IDRBs. Under the IDRB law, municipalities may do all of the following:

1. Construct, equip, acquire, rebuild, maintain, or remodel industrial projects.
2. Borrow money and issue IDRBs to finance all or part of the costs of the work described in item 1., above, and for improving sites for industrial projects.
3. Enter into revenue agreements that are related to industrial projects. "Revenue agreements" is defined to include any lease, sales or service contract, loan agreement, or similar agreement providing that any private person agrees to pay the municipality an amount of funds to provide for the payment of the principal of, and interest on, the IDRBs and agrees to construct the project.

4. Mortgage all or part of the industrial project, or assign the revenue agreements in favor of the bond holders.
5. Sell the industrial project and site.

Generally, the principal and interest due on IDRBS issued by a municipality are payable solely out of the revenues derived under the revenue agreement that relates to the project to be financed by the bonds. In addition, there are a number of certifications that must be obtained, and notice, filing, and bidding requirements that must be met, before a municipality may enter into a revenue agreement.

The Act authorizes any county to issue IDRBS and to act under the IDRB statute in the same manner as a municipality.

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SG:ksm